

NTSB Order No. EA-3715

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of October, 1992

Respondent .

5877

powerplant ratings ("A&P" certificate) on an allegation that he obtained that certificate by making a fraudulent or intentionally false statement on his application for the certificate, in violation of Section 65.20(a)(1) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 65.² The Administrator also alleged that respondent lacks the qualifications to hold an airman certificate.

Respondent asserts on appeal³ that the law judge's findings are not supported by sufficient evidence and should be reversed.⁴

The Administrator has filed a brief in reply, urging the Board to affirm the law judge's initial decision and order. For the reasons that follow, we will deny respondent's appeal.

²FAR Section 65.20(a)(1) provides as follows:

"§ 65.20 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made-
 (1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part...."

³Respondent waived the Board's emergency procedures subsequent to his filing of a Notice of Appeal of the Initial Decision.

⁴Respondent also claims that the emergency provisions of the Federal Aviation Act of 1958 deprived him of due process by giving him insufficient time to prepare for his hearing. The necessity for emergency action is a matter entrusted to the Administrator by statute, and is not reviewable by the Board. See Nevada Airlines, Inc. v. Bond, 622 F.2d 1017 (9th Cir. 1980).

A claim by a respondent that he was hindered in his ability to conduct adequate discovery before an emergency hearing was recently rejected by the Sixth Circuit in Blackman v. Busey, 938 F.2d 659, 664 (6th Cir. 1991), where the court noted that some criminal defendants are given only thirty days for trial preparation.

The record reveals that respondent took a course at a local college in order to obtain an A&P certificate. The course was approved by the FAA in accordance with the provisions of FAR Part 147.⁵ FAR section 147.35(b) provides that each certificated aviation maintenance technician school "...shall give a graduate certificate or certificate of completion to each student that it graduates. An official of the school shall authenticate the certificate. The certificate must show the date of graduation and the approved curriculum title." The FAA allows an applicant to take practical and oral examinations based on his or her application and presentation of a graduate certificate. FAR Section 65.75.

On September 23, 1991, respondent applied to the FAA for an A&P certificate. Respondent checked off the box on the application, indicating that he was a "Graduate of Approved Course." He indicated that he had attended Belleville Area College ("BAC"), and that the School Number and Curriculum from which he graduated was "Demt 159 D Powerplant Technician Cert" [certificate]. He also indicated that he had graduated on May 17, 1991. Attached to respondent's application was a copy of a "Certificate of Program Proficiency" which showed that respondent had "successfully completed the occupational program of study as prescribed by the Board and Faculty [and] is awarded the Certificate of Proficiency for successful completion of the

⁵FAA assigned certificate number DENT 159-D to signify that the school's curriculum had been approved.

[powerplant technician] program" (Administrator's Exhibit A-1). Respondent was thereupon administered oral and practical tests, all of which he passed. The FAA approved respondent's application and issued him a temporary certificate.

The Administrator further established that on September 23, 1991, the date of his application, respondent was not a graduate of the FAA-approved course at BAC because he had failed one of the FAA qualifying examinations. Respondent had not been awarded a "graduate certificate" as described in FAR Section 147.35(b), but instead received from his school and presented to the FAA a certificate which showed only that he had completed the powerplant technician program in accordance with state accreditation requirements. The question before the Board is whether respondent knew that the school issued two different types of certificates,⁶ and whether he knew that he did not possess or present the graduate certificate required by the FAA, at the time of his application. The law judge found that respondent knew his application was false and, therefore, affirmed the Administrator's emergency order of revocation.

Respondent points us to the FAR provision on which he claims he relied in presenting to the FAA what he believed to be a

⁶The student handbook (Administrator's Exhibit A-4) delineates the differences between the two certificates, but respondent claims that he was never given a copy of the handbook.

proper certificate. FAR section 65.77 provides, in pertinent part:

§ 65.77 Experience Requirements.

Each applicant for a mechanic certificate or rating must present either an appropriate graduation certificate or certificate of completion from a certificated aviation maintenance technician school....

One of respondent's professors testified that in response to a question from respondent concerning eligibility requirements, he referred respondent to FAR Section 65.77.⁷

At first blush, respondent's claim that he reasonably relied on the language in FAR Section 65.77 in concluding that the certificate which he possessed would suffice for the FAA's purposes is convincing.⁸ Nonetheless, we are compelled to agree with the law judge who, based on other evidence in the record and, at least implicitly, based on his evaluation of respondent's credibility, found otherwise.

On August 15, 1991, respondent failed an FAA qualifying examination. On August 21, 1991, he filed an application with the school registrar's office for an "occupational" certificate.

(Respondent's Exhibit R-15). Respondent indicated therein that he had completed the appropriate occupational certificate program

⁷Respondent also claims that he told the FAA Inspector who took his application that he had failed a qualifying examination, but that the Inspector told him that "qualifiers don't mean nothing," and he instructed respondent to check the box indicating that he had graduated. (TR 211-212). The inspector denies any knowledge of respondent's problems with a qualifying examination.

⁸In fact, at the request of the FAA, the school no longer issues a "Certificate of Proficiency."

in the summer of 1991, and that he had followed the 1990 catalogue for his certificate's requirements. The registrar noted on the application that the certificate was mailed to respondent on September 5, 1991.

On September 14, 1991, respondent wrote to the Dean of Technical Education. In that letter (Administrator's Exhibit A-7) he states, in pertinent part:

As you know my main goal is to receive my graduate certificate for my completion of the power plant technician class. In this document I will state the events which have prevented me from doing so...[Respondent discusses his problems with a laboratory class given by one professor]...If I would have taken the test in the spring of '91, I would have received enough points to allow me my graduate certificate...Therefore, I request that you grant me my graduate certificate in light of these circumstances.

I have passed all classes now and am being held up because of one test. (Emphasis added).

Respondent claims that, notwithstanding the registrar's notation that the Certificate of Proficiency was mailed to him on September 5, 1991, he did not receive it until eleven days later, September 16th, which was two days after he sent the letter to the Dean. Respondent testified that he believed that his dispute with his professor had been resolved and that the Dean had thereupon issued to him the "graduate certificate" which entitled him to take the FAA oral and practical tests, in response to his letter dated September 14. The law judge rejected respondent's claims, finding that he "probably knew in his mind that he was not a graduate" when he filled out the FAA application. (Initial Decision at TR-297). Implicit in the law judge's finding is a

credibility determination against respondent.⁹ Resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge.

Administrator v. Smith, 5 NTSB 1560, 1563 (1987).

Respondent offers us no persuasive reason to disturb the law judge's findings, which would require us (1) to accept respondent's doubtful claim that he received the certificate on September 16, even though the evidence indicates that it was mailed to him on September 5, and (2) to conclude that the respondent could have received a graduate certificate from the Dean only two days after mailing on September 14 a letter to request that one be issued despite his failure on one test.¹⁰ We also note that respondent's letter repeatedly refers to the fact that he knew he did not have a "graduate certificate." Moreover, his repeated use of the term "graduate certificate" is suspect since it no doubt came from some source which describes the FAA-approved program, of which respondent claims total ignorance.¹¹

⁹While we appreciate the reluctance to make an unequivocal finding concerning an individual's veracity when that person is in the hearing room, a law judge is charged with including in the oral decision a statement of findings and conclusions on, among other things, the credibility of witnesses. Vague euphemisms are inadequate, even where, as in this case, the record amply supports a finding that respondent fully understood the difference between a graduate certificate and a certificate of proficiency.

¹⁰The Dean actually responded to respondent some two weeks later, in a letter dated October 2, 1991. (Administrator's Exhibit A-8).

¹¹On his FAA application respondent wrote down the number which the school had been assigned by the FAA for its graduate certificate, "DEMT 159-D." This number appears nowhere on the

Finally, the fact that respondent specifically applied for a certificate which he knew was not a "graduate" certificate establishes that he knew there were two types of certificates.¹² For these reasons his claims of confusion and ignorance must be rejected. We concur in the law judge's determination that the Administrator's revocation order should be affirmed in its entirety.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied, and
2. The initial decision and the emergency order of revocation are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

(..continued)

certificate in respondent's possession, and we think it is reasonable to conclude that this information also is derived from the student handbook or similar literature. See also Exhibit R-14, a sample of a "graduation certificate" issued by the school, which indicates at the top, "FAA Approved School No. DMT-159D," and which is signed and certified by the Coordinator of the Aviation Maintenance Technology Department, in accordance with FAR §147.35(b). While the certificate presented by respondent was on its face inconsistent with the requirements of the FAR, respondent does not claim that it was unreasonable for the FAA to nonetheless rely on his intentionally false representations.

¹² Presumably, he also knew on August 21 that he had failed the FAA qualifying examination, which is why he would not receive a "graduate certificate" and which is why he applied for the certificate of proficiency.